

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs November 14, 2007

**JAMES WILLIAM TAYLOR a/k/a LUTFI SHAFQ TALAL v. STATE OF
TENNESSEE**

**Appeal from the Circuit Court for Hickman County
No. 07-5025C Timothy Easter, Judge**

No. M2007-01405-CCA-R3-HC - Filed April 11, 2008

Petitioner has appealed the Hickman County habeas corpus court's order summarily dismissing the petition for the writ of habeas corpus. In that petition, Petitioner alleged that he was improperly sentenced, that the trial court lacked authority to determine his release eligibility and that the trial court failed to render a final sentencing judgment regarding his first degree murder conviction. Upon a review of the record in this case we are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and we affirm the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and JOHN EVERETT WILLIAMS, JJ., joined.

James William Taylor a/k/a Lufti Shafq Talal, Pro Se, Only, Tennessee.

Robert E. Cooper, Jr., Attorney General & Reporter; Rachel West Harmon, Assistant Attorney General, and Ron Davis, District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

In August of 1988, Petitioner was convicted in Williamson County Circuit Court of first degree murder, second degree burglary and robbery. Petitioner was sentenced to life imprisonment for the first degree murder conviction, fifteen years for burglary and fifteen years for robbery. The trial court ordered the sentences to run consecutively. Petitioner appealed his conviction. On direct appeal, this Court summarized the underlying facts as follows:

The State's proof showed that [Petitioner] broke into the Franklin home of 89-year-old Frances Schmidt during the night, after unscrewing the light bulb from an outdoor light fixture and cutting the telephone lines leading into her apartment. [Petitioner] either suffocated the victim, or attempted to suffocate her, causing her heart to fail. He took several of Frances Schmidt's rings from her apartment and sold two of them to a man named Charles Alexander. [Petitioner] made vague statements to others about having made "a hit" and having killed someone. He was also overheard to have said that he "didn't mean to hurt the bitch but she wouldn't shut up."

State v. James Taylor, No. 89-93-III, 1990 WL 50751, at *1 (Tenn. Crim. App., at Nashville, Apr. 25, 1990), *perm. app. denied*, (Tenn. Oct. 8, 1990). On appeal, Petitioner challenged the sufficiency of the evidence, the trial court's decision not to exclude a juror for cause, the trial court's failure to dismiss the entire jury venire, the trial court's decision to allow evidence of other crimes to be admitted, the introduction of autopsy photographs of the victim, the admissibility of the testimony of a State witness, the rebuttal testimony of a detective and his sentence. This Court found no merit to Petitioner's issues and affirmed the judgment of the trial court. *Id.* at *7. The supreme court denied permission to appeal.

In April of 1991, Petitioner filed a pro se petition for post-conviction relief in which he argued that he received ineffective assistance of counsel at trial and that the State withheld exculpatory evidence. *See James William Taylor v. State*, No. 01C01-9809-CC-00384, 2000 WL 641148, at *1 (Tenn. Crim. App., at Nashville, May 19, 2000), *perm. app. denied*, (Tenn. Sept. 25, 2000). After a hearing, the post-conviction court denied relief, and on appeal this Court affirmed the post-conviction court's judgment. *Id.*

Subsequently, Petitioner filed a pro se petition for habeas corpus relief in the Circuit Court for Lauderdale County.¹ Petitioner then filed a second pro se petition for writ of habeas corpus. The habeas corpus court summarily dismissed that petition on August 26, 2002, finding that the trial court had jurisdiction and Petitioner's sentence had not expired. Further, the habeas corpus court determined that no grounds were alleged in the petition which would entitle Petitioner to a hearing and that it appeared that Petitioner may have already raised identical issues in federal court.

On July 22, 2003, Petitioner filed a third petition for habeas corpus relief in Hickman County alleging that the presentments charging him were fatally defective, thereby depriving the trial court of proper jurisdiction; the trial court violated his constitutional rights; the trial court erred when it ordered the sentences to run consecutively; the trial court erred by finding Petitioner to be a Range II offender; the trial court approved an illegal judgment of conviction; and the habeas corpus court erred by denying Petitioner a right to respond to the State. The State filed a motion to dismiss the

¹The technical record does not contain a copy of Petitioner's first petition for writ of habeas corpus.

petition for failing to state a claim. On August 26, 2003, the habeas corpus court granted the State's motion to dismiss the petition. This Court affirmed the trial court's judgment. *See James W. Taylor aka Lutfi S. Talal v. Wayne Brandon*, No. M2003-02235-CCA-R3HC, 2004 WL 2984842, at *4 (Tenn. Crim. App., at Nashville, Dec. 14, 2004), *perm. app. denied*, (Tenn. Mar. 21, 2005).

On November 2, 2005, Petitioner filed a fourth pro se petition for writ of habeas corpus relief alleging that he was improperly sentenced, that the trial court lacked authority to determine his release eligibility and that the trial court failed to render a final sentencing judgment regarding his first degree murder conviction. On November 3, 2005, Petitioner filed an amended petition alleging that the trial court also lacked jurisdiction to sentence Petitioner to two separate sentences for the same offense unrelated to the first degree murder, second degree burglary and robbery convictions. The habeas corpus court granted the motion to dismiss, and Petitioner appealed to this Court. *See Lufti Shafq Talal a/k/a James William Taylor v. State*, No. M2005-02964-CCA-R3-HC, 2006 WL 1447377, at *2, (Tenn. Crim. App., at Nashville, May 23, 2006), *perm. app. granted*, (Tenn. Nov. 13, 2006). This Court affirmed the habeas corpus court's dismissal of the petition for habeas corpus relief because several of the issues had been previously determined, and Petitioner failed to adhere to the mandatory procedural requirements, including attaching the underlying judgment to his petition. Petitioner had argued on appeal that the trial court had not entered a judgment on his conviction of first degree murder, therefore, he could not comply with the mandatory requirements.

On November 13, 2006, our supreme court by order granted Petitioner's application for permission to appeal. The following is the order in its entirety:

After reviewing the merits of the petitioner's Rule 11 Application, the Court finds that none of the issues merit review save one: the apparent failure of the trial court to enter a judgment order in Count Three of Williamson County case number 1880108 (first-degree murder). This technical failure, while not a basis for habeas corpus relief, does merit some action on the part of this Court. Accordingly, the petitioner's Rule 11 Application is GRANTED for the sole purpose of remedying this technical error. The case is summarily REMANDED to the Williamson County Circuit Court for entry of a proper judgment order

Lufti Shafq Talal a/k/a James William Taylor v. State, No. M2005-02964-SC-R11-HC (Tenn. Nov. 13, 2006).

On April 16, 2007, Petitioner filed yet another petition for writ of habeas corpus relief in Hickman County. In this petition, Petitioner argues that (1) he is being held in violation of his Fifth and Fourteenth Amendment rights because there was no judgment of conviction for count 188-108, felony murder; (2) because there is no felony murder judgment, his sentences for burglary and robbery cannot be ordered to be served consecutively to the felony murder sentence; and (3) because

there was no judgment for felony murder, this Court, the Tennessee Supreme Court, the Federal District Court for Middle Tennessee and the Federal Sixth Circuit Court of Appeals did not have jurisdiction or authority to review his previous appeals. On May 23, 2007, the State filed a motion to dismiss the petition for writ of habeas corpus relief. In an order filed June 11, 2007, the habeas corpus court granted the State's motion and summarily dismissed the petition. Petitioner now appeals the dismissal of that petition.

ANALYSIS

The determination of whether to grant habeas corpus relief is a question of law. *See Hickman v. State*, 153 S.W.3d 16, 19 (Tenn. 2004). As such, we will review the habeas corpus court's findings de novo without a presumption of correctness. *Id.* Moreover, it is the petitioner's burden to demonstrate, by a preponderance of the evidence, "that the sentence is void or that the confinement is illegal." *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. *See Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *Potts v. State*, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. *See Taylor*, 995 S.W.2d at 83. "A void judgment 'is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant's sentence has expired.' We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal." *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting *Taylor*, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner's filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. T.C.A. § 29-21-109; *State ex rel. Byrd v. Bomar*, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), *superceded by statute as stated in State v. Steven S. Newman*, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. *Summers v State*, 212 S.W.3d 251, 260 (Tenn. 2007); *Hickman*, 153 S.W.3d at 19-20; *Archer*, 851 S.W.2d at 165. For the benefit of individuals such as Petitioner, our legislature has explicitly laid out the formal requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, is a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

A habeas corpus court "properly may choose to summarily dismiss a petition for failing to comply with the statutory procedural requirements." *Summers*, 212 S.W.3d at 260; *See also Hickman*, 153 S.W.3d at 21. Further, in *Summers*, our supreme court explained:

In the case of an illegal sentence claim based on facts not apparent from the face of the judgment, an adequate record for summary review must include pertinent documents to support those factual assertions. When such documents from the record of the underlying proceedings are not attached to the habeas corpus petition, a trial court may properly choose to dismiss the petition without the appointment of counsel and without a hearing.

212 S.W.3d at 261.

Petitioner argues that the trial court did not enter a judgment on his felony murder conviction, therefore, he was unable to attach the judgment to his petition. As he stated in both his petition and his brief on appeal, the supreme court remanded his case to trial court for entry of a judgment on the felony murder conviction and correction of the clerical error. Petitioner argues that his case was

remanded but does not mention that a judgment was indeed entered after the remand. However, Petitioner was aware of the entry of the judgment upon remand as evidenced by an order filed by this Court on April 20, 2007, four days after Petitioner filed the habeas corpus petition currently under review. In this order, we stated that “[t]he trial court entered a judgment order on remand on count three in case number 188-108 pursuant to the supreme court’s recent direction. The Appellant subsequently filed several pleadings in the Williamson County Circuit Court relating to the recently entered judgment order on count three.” *Lutfi Shafq Talal a/k/a James William Taylor v. State*, M2007-832-CCA-R3-CD, at *1 (Tenn. Crim. App., at Nashville, Apr. 20, 2007). This Court then dismissed Petitioner’s notice of appeal stemming from his renewed attempts to appeal his conviction. As evidenced from this order, it is clear that Petitioner knew of the existence of the judgment entered after the remand before he filed the present habeas corpus petition. Nonetheless, he has failed to attach a copy of the judgment to his present petition.

In this case, Petitioner did not meet the statutory requirements. He did not attach the underlying judgment to his petition for writ of habeas corpus or offer an explanation as to why he did not attach the judgment. *See* T.C.A. § 29-21-107(b)(2); *State ex rel. Wood v. Johnson*, 393 S.W.2d 135, 136 (Tenn. 1965). As stated above, failure to meet the statutory requirements is sufficient basis for a summary dismissal of a petition for writ of habeas corpus relief. *Summers*, 212 S.W.3d at 260; *Hickman*, 153 S.W.3d at 21.

We note that all three of Petitioner’s issues are based on his assertion that there was no judgment entered for his felony murder conviction. While that may have been the case up until the remand by our supreme court, there is now a valid judgment entered by the trial court. Our supreme court noted that the trial court’s failure to enter a judgment was a clerical mistake and not a proper basis for habeas corpus relief.

Therefore, the habeas corpus court acted properly in summarily dismissing the petition.

CONCLUSION

For the foregoing reasons, we affirm the decision of the habeas corpus court.

JERRY L. SMITH, JUDGE